

1 The opinion in support of the decision being entered today was
2 *not* written for publication and is *not* binding precedent of the Board.
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5 UNITED STATES PATENT AND TRADEMARK OFFICE
6
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8 BEFORE THE BOARD OF PATENT APPEALS
9 AND INTERFERENCES
10
11

12 *Ex parte* JAMES WRIGHT,
13 KLAUS DRUTSCHMANN,
14 and
15 PETER A. LUCCARELLI, JR.
16
17

18 Appeal No. 2006-1926
19 Application No. 09/528,693
20 Technology Center 3600
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23 Decided: April 27, 2007
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26 Before STUART S. LEVY, ROBERT E. NAPPI, and ANTON W. FETTING,
27 *Administrative Patent Judges*.

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29 LEVY, *Administrative Patent Judge*.
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31

32 DECISION ON APPEAL
33

34 STATEMENT OF THE CASE

35 Appellants appeal from a final rejection of claims 1 to 6 under 35 U.S.C.
36 § 134 (2002). We have jurisdiction under 35 U.S.C. § 6(b) (2002).
37

1 The Examiner rejected claims 1-6 under 35 U.S.C § 103(a) (2004) as being
2 unpatentable over Cragun in view of Ohanian.

3 Alternatively, the Examiner rejected claims 1-6 under 35 U.S.C § 103(a)
4 (2004) as being unpatentable over Hudetz in view of Ohanian.

5 Claim 1 is representative of the claims under appeal and reads as follows:

6 1. A system for providing product information for a predetermined product
7 comprising:

8
9 a product information apparatus comprising an indicator contained in
10 a memory; and

11
12 a predetermined product coupleable to a programmable logic
13 controller, the programmable logic controller coupleable to a network, said
14 indicator associated with said predetermined product and indicative of a
15 network web page where product information is provided for said
16 predetermined product, the network web page comprising an on-line product
17 support help window.

18
19 The prior art relied upon by the Examiner in rejecting the claims on appeal
20 is:

21 Cragun	US 5,804,803	Sep. 8, 1998
22 Hudetz	US 5,978,773	Nov. 2, 1999
23 Ohanian	US 6,109,526	Aug. 29, 2000

24
25
26 Appellants contend that the claimed subject matter would not have been
27 obvious. In particular, Appellants assert that the reference disclosures do not teach
28 or suggest all the claim limitations because a programmable logic controller (PLC)
29 is not disclosed in any of the references. (Reply Br. 6). According to Appellants
30 (*id.*), a PLC is defined as:

31 [A] digitally operating electronic apparatus which uses a
32 programmable memory for the internal storage of instructions for

1 implementing specific functions such as logic, sequencing, timing,
2 counting and arithmetic to control through digital or analog
3 input/output modules, various types of machines or processes.
4

5 Appellants argue (*id.*) that the Examiner improperly construed a radio
6 frequency (RF) tag as being equivalent to a PLC because a RF tag fails to meet this
7 definition.

8 In contrast, the Examiner contends that a RF tag meets Appellants'
9 definition of PLC and therefore, the claimed subject matter would have been
10 obvious in view of the reference disclosures. (Final Rejection 12).
11

12 We affirm.
13

14 ISSUE

15 The issue is whether Appellants have shown that the Examiner erred in
16 finding that the teachings and suggestions of Cragun and Ohanian, or alternatively
17 of Hudetz and Ohanian, would have suggested to an artisan the invention of claims
18 1-6. The issue turns on whether the prior art would have suggested a
19 programmable logic controller (PLC), as recited in claim 1.
20

21 FINDINGS OF FACT

22 We determine that the following enumerated findings are supported by at
23 least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422,
24 1427, 7 USPQ2d 1152, 1156 (Fed. Cir. 1988) (explaining the general evidentiary
25 standard for proceedings before the Office).
26

- 1 1. Appellants invented a system for providing product information over the
2 Internet. (Specification 1). Specifically, the invention utilizes an
3 indicator 102 that is disposed on the label 100 of a product 106.
4 (Specification 3). The indicator 102 comprises an URL for a web site
5 that includes information about the product. (*Id.*). The indicator 102 is
6 stored in a memory 200 and subsequently accessed by a processor 202,
7 which retrieves the product web site via an Internet interface 204.
8 (Specification 3-4). The processor comprises an industrial-type
9 processor such as a PLC. (*Id.*).
10 2. Cragun is directed to a mechanism for retrieving information using data
11 encoded on an object. (Cragun, col. 1, ll. 1-3).
12 3. Cragun discloses a client computer 102 that includes central processing
13 unit (CPU) 104 connected via bus 119 to display screen 114, input device
14 116, scanning device 118, wireless network device 120, memory 106,
15 and storage 112. (Cragun, col. 3, ll. 56-59 and figure 1A).
16 4. CPU 104 is suitably programmed by processing program 110. In
17 addition, control circuitry through the use of logic gates, programmable
18 logic devices, or other hardware components can also be used. (Cragun,
19 col. 4, ll. 45-50).
20 5. Object 115 is a tangible object of interest to the customer, about which
21 the customer desires to find out more information. (Cragun, col. 3, ll. 62-
22 64).
23 6. Scanning device 118 is capable of reading code 117 from object 115 and
24 customer identifier (CID) 210 from customer card 119. (Cragun, col. 3,
25 ll. 59-61). Barcode input buffer 109 stores code information read by
26 scanning device 118 from object 115. (col. 4, ll. 34-36). Code 117 is

1 converted to a URL by the processing program 110 and sent to the URL
2 output buffer 111. (Cragun, col. 4, ll. 37-39). The URL output buffer
3 111 sends the URL from client computer 102 to external network 148 via
4 local server computer 122. (Cragun, col. 7, ll. 7-10). The URL requests
5 document 174, which is sent to the client computer 102 from remote
6 server 160 and displayed on display screen 114. (Cragun, col. 8, ll. 53-
7 56).

- 8 7. The document is a HTML World Wide Web page that points to a brief
9 amount of customer and product information, and yet allows the
10 capability to query remote documents at length and extract even greater
11 amounts of information than are practical in an initial pre-specified
12 query. (Cragun, col. 8, ll. 64-65 and col. 9, ll. 5-10).

13 From our review of Ohanian, we make the following findings of fact:

- 14 8. Ohanian is directed to an optical and passive electromagnetic reader for
15 reading machine-readable symbols, such as bar codes, as well as reading
16 wireless tags, such as radio frequency tags. (Ohanian, col. 1, ll. 1-8).
17 9. Ohanian explains that a bar code can be replaced by a RF tag because RF
18 tags overcome many limitations associated with bar code symbols.
19 (Ohanian, col. 1, ll. 23-34).

20 From our review of Hudetz, we make the following findings of fact:

- 21 10. Hudetz is directed to a system and method for using an ordinary article
22 of commerce to access a remote computer. (Hudetz, col. 1, ll. 1-4).
23 11. Hudetz discloses a local host 28, which includes a CPU 30, a random
24 access memory 32, and an address/data bus 34. A modem 36 and I/O
25 port 38 are attached to bus 34 by suitable interfaces 40 and 42,
26 respectively. (Hudetz, col. 5, ll. 13-22).

12. Input device 44 reads a UPC bar code symbol 46 affixed to an article of commerce 48. (Hudetz, col. 5, lines 23-26). Each record 62-68 of database 60 associates a UPC with a particular Internet URL. (Hudetz, col. 7, ll. 17-20).

13. When a user is interested in Internet resources concerning a particular type of product, the user can access those resources by taking a product and entering all or part of the product's UPC. Database 60 uses the entered UPC to look up the associated URL, which is returned to the user in the form of a HTML document. (Hudetz, col. 8, ll. 12-20).

PRINCIPLES OF LAW

On appeal, Appellants bear the burden of showing that the Examiner has not established a legally sufficient basis for combining the teachings of Cragun with those of Ohanian, or alternatively the teachings of Hudetz with those of Ohanian. Appellants may sustain their burden by showing that where the Examiner relies on a combination of disclosures, the Examiner failed to provide sufficient evidence to show that one having ordinary skill in the art would have done what Appellants did. *United States v. Adams*, 383 U.S. 39, 52, 148 USPQ 479, 483-84 (1966); *In re Kahn*, 441 F.3d 977, 987-88, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006); *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick, Co.*, 464 F.3d 1356, 1360-61, 80 USPQ2d 1641, 1645 (Fed. Cir. 2006). The mere fact that all the claimed elements or steps appear in the prior art is not per se sufficient to establish that it would have been obvious to combine those elements. *United States v. Adams, supra*; *Smith Industries Med. Sys., Inc. v. Vital Signs, Inc.*, 183 F.3d 1347, 1356, 51 USPQ2d 1415, 1420-21 (Fed. Cir. 1999).

ANALYSIS

We begin with the rejection of claims 1-6 under 35 U.S.C § 103(a) as being unpatentable over Cragun in view of Ohanian. We note initially that Appellants argue the claims as a group¹. Accordingly, we select claim 1 as representative of the group.

Regarding claim 1, the Examiner's position (Answer 9-10) is that Cragun lacks a programmable logic controller (PLC). To overcome this deficiency of Cragun, the Examiner turns to Ohanian for a teaching of a PLC. According to the Examiner (Answer 12), the RF tag taught by Ohanian is functionally equivalent to a PLC and therefore, the combination of Cragun and Ohanian meet the claimed limitations.

In contrast, Appellants assert (Br. 17) that the combination of Cragun and Ohanian do not teach or suggest every limitation of the claims. In particular, Appellants argue (Reply Br. 6) that a RF tag is not equivalent to a PLC and therefore, none of the references teach or suggest a PLC. Appellants (Reply Br. 7) rely solely on the Declaration of Dr. Williams to provide the following two definitions of a PLC:

(1) a device that follows programmed instructions to provide automated monitoring and/or control functions over a machine and/or process by evaluating a set of inputs, and

(2) a digitally operating electronic apparatus which uses a programmable memory for the internal storage of instructions for implementing specific functions such as logic, sequencing, timing, counting

¹ Appellants present arguments as to claims 1 (Reply Br. 9) and 6 (*id.*). Accordingly, we will consider claims 1 and 6 as representative of the claimed invention.

1 and arithmetic to control through digital or analog input/output modules,
2 various types of machines or processes.²
3

4 According to Appellants (Reply Br. 8), Ohanian's teaching of a RF tag fails
5 to meet either of these two definitions. Therefore, Appellants contend (*id.*) that
6 neither Cragun nor Ohanian teach or suggest a PLC.

7 We note that while extrinsic evidence such as Dr. Williams' Declarations
8 "can shed useful light on the relevant art," it is "less significant than the intrinsic
9 record in determining 'the legally operative meaning of claim language.'" *Phillips*
10 *v. AWH Corp.* 415 F.3d 1303, 1317, 75 USPQ2d 1321, 1330-31 (Fed. Cir. 2005).
11 Accordingly, we rely first on the specification, which is the "single best guide to
12 the meaning of a disputed term." *See id.* at 1315.

13 Turning to Appellants' specification (Specification 4), PLC is defined as an
14 "industrial-type processor." In addition, PLC is illustrated in figure 2 as processor
15 202 that is connected to memory 200, display 206, and Internet interface 204. In
16 light of Appellants' general descriptions of PLC in their Specification, we find that
17 under the broadest reasonable interpretation consistent with the Specification, we
18 construe PLC to mean a central processor unit (CPU) having an associated

² Appellants assert that they have invoked lexicography in both of Dr. Williams' Declarations (Br. 12). We find no such invocation. The inventor's lexicography governs when the specification reveals a special definition given to a claim term that differs from the meaning it would otherwise possess. Here, Appellants have not provided a special definition of PLC in their specification. Instead, Appellants contend that PLC should be defined according to the Declaration of Dr. Williams, who Appellants argue is one of ordinary skill in the art. Because Appellants assert that PLC should be given the meaning it would normally possess, i.e., according to one of ordinary skill in the art, lexicography is not a relevant issue.

1 input/output that operates upon instructions stored in a logic memory³. While we
2 agree with Appellants (Reply Br. 6) that a RF tag is not equivalent to a PLC, we
3 nonetheless find from facts 3 and 4 that Cragun discloses a PLC under this
4 construction of the claim.

5 We find from facts 3 and 4 an industrial-type processor 104 that is connected
6 to memory 106, display 114, and Internet interface 120, in a manner similar to the
7 PLC in Appellants' Specification. Thus, we find that Cragun discloses a PLC to
8 the extent that Appellants disclose a PLC in their Specification.

9 Moreover, we note that even if we were to apply Appellants' definitions of
10 PLC, we find from facts 3 and 4 that Cragun still discloses a PLC that meets
11 Appellants' definitions. For instance, we find from fact 4 a disclosure of a
12 *programmable logic device*. From fact 3, we find a device 104 that follows
13 programmed instructions in 110 to provide automated monitoring and/or control
14 functions over the display screen 114, touch input device 116, scanning device
15 118, and wireless network device 120, by evaluating a set of inputs from bus 119.
16 We additionally find from facts 3 and 4 a digitally operating electronic apparatus
17 104, which uses a programmable memory 110 for the internal storage of
18 instructions for implementing specific functions such as logic, sequencing, timing,
19 counting, and arithmetic to control, through digital or analog input/output modules
20 119, various types of machines 114, 116, 118, and 120. Therefore, we find that
21 Cragun discloses a PLC that meets Appellants' specific definitions.

22 In addition to a PLC, we find from fact 6 that Cragun discloses an indicator
23 117 that is stored in a memory 109 and associated with a product 115. From facts
24 6 and 7, we find that the indicator is indicative of a network web page where

³ *McGraw-Hill Encyclopedia of Science and Technology* 394 (7th ed. ©1992).

1 product information is provided for the product. Also, we find from fact 7 that
2 Cragun inherently teaches or suggests a network web page comprising an on-line
3 product support help window. Finally, from facts 3 and 4, we find a product
4 coupleable to a programmable logic controller that is connected to a network.

5 Turning to claim 6, we do not agree with Appellants' assertion (Reply Br.
6 11) that neither Cragun nor Ohanian "teach or suggest 'the programmable logic
7 controller is coupled to the network via means for automatically interfacing to the
8 Internet to access the web page based on said indicator.'" To the contrary, we find
9 from facts 3 and 6 (of Cragun) that the programmable logic controller is coupled to
10 the network for automatically interfacing to the Internet to access the web page
11 based on the indicator 117.

12 From the above findings, we conclude that Cragun teaches all the limitations
13 of claims 1 and 6. We note that a reference disclosure that anticipates claims under
14 35 U.S.C. § 102 also renders the claims unpatentable under 35 U.S.C. § 103
15 because "anticipation is the epitome of obviousness." *Jones v. Hardy*, 727 F.2d
16 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984). *See also In re Fracalossi*,
17 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); *In re Pearson*, 494 F.2d
18 1399, 1402, 181 USPQ 641, 644 (CCPA 1974). Accordingly, the rejection of
19 claims 1-6 under 35 U.S.C. § 103(a) as being unpatentable over Cragun in view of
20 Ohanian is sustained. However, because we relied solely on Cragun, as well as
21 applied a different rationale from the Examiner, we designate our affirmance as a
22 New Ground of Rejection under the provisions of 37 C.F.R.
23 § 41.50(b).

24 We turn next to the rejection of claims 1-6 under 35 U.S.C. § 103(a) as
25 being unpatentable over Hudetz in view of Ohanian. We note again that the

1 Appellants argue the claims as a group. Accordingly, we select claim 1 as
2 representative of the group.

3 Regarding claim 1, we find from fact 13 that Hudetz discloses a system for
4 providing product information for a predetermined product over the Internet. From
5 fact 12, we additionally find that Hudetz teaches an indicator contained in a
6 memory. However, from our review of Hudetz, Appellants (Br. 18) are correct
7 that Hudetz does not disclose a programmable logic controller (PLC). Moreover,
8 in light of our finding, *supra*, that a RF tag is not equivalent to a PLC, Ohanian
9 fails to correct Hudetz's deficiency. Accordingly, we will not sustain the rejection
10 of claims 1-6 under 35 U.S.C. § 103(a) as being unpatentable over Hudetz in view
11 of Ohanian.

12 This decision contains a new ground of rejection pursuant to 37 C.F.R. §
13 41.50(b)(effective September 13, 2004). 37 C.F.R. § 41.50(b) provides "[a] new
14 ground of rejection pursuant to this paragraph shall not be considered final for
15 judicial review."

16 37 C.F.R. § 41.50(b) also provides that the Appellants, *WITHIN TWO*
17 *MONTHS FROM THE DATE OF THE DECISION*, must exercise one of the
18 following two options with respect to the new ground of rejection to avoid
19 termination of the appeal as to the rejected claims:

20 (1) *Reopen prosecution*. Submit an appropriate amendment of the
21 claims so rejected or new evidence relating to the claims so rejected, or both,
22 and have the matter reconsidered by the examiner, in which event the
23 proceeding will be remanded to the examiner...

24
25 (2) *Request rehearing*. Request that the proceeding be reheard under
26 37 CFR § 41.52 by the Board upon the same record.

1

2

CONCLUSION OF LAW

3 On the record before us, we find that Appellants have failed to sustain their
4 burden of establishing that Examiner's rejection of claims 1-6 under 35 U.S.C. §
5 103(a) as being unpatentable over Cragun in view of Ohanian is not supported by a
6 legally sufficient basis for holding that the claimed subject matter would have been
7 obvious. However, Appellants have shown that the disclosures of Hudetz and
8 Ohanian do not teach or suggest all the claim limitations.

DECISION

The rejection of claims 1-6 under 35 U.S.C. § 103(a) as being unpatentable over Cragun in view of Ohanian is affirmed. We designate this affirmance as a New Ground of Rejection under 37 C.F.R. § 41.50(b).

The rejection of claims 1-6 under 35 U.S.C. § 103(a) as being unpatentable over Hudetz in view of Ohanian is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED - 37 C.F.R. § 41.50(b)

hh

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